

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JOHN A SOSA**  
Claimant

**APPEAL NO. 09A-UI-17210-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARMLAND FOODS INC**  
Employer

**OC: 09-23-07**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 8, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 22, 2009. The claimant did participate and was represented by Brian Goldsmith, Attorney at Law. The employer did participate through Katie Halberg, Human Resources Assistant and Lori Conchas, Bacon Supervisor. Employer's Exhibit One was received.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker on the bacon line full time beginning April 16, 2009 through September 21, 2009 when he was discharged.

The claimant worked on the ends and pieces line which required he stay later than others working on different parts of the line. At approximately 1:30 a.m. one of his coworkers, Abdou Faye, told the claimant that he could leave that he would finish up his job duties. Mr. Faye had to wait until the claimant finished his work before he could finish his own. When Lori Conchas came out of her office she saw Mr. Faye up on the table and asked him where the claimant had gone. Mr. Faye told her that the claimant had left. Later when confronted by the employer Mr. Faye admitted that he had told the claimant to leave early. Because he was a supervisor Mr. Faye did not have the authority to tell the claimant to leave early and the claimant knew that. When the employer learned that Mr. Faye had told the claimant to go ahead and leave, Mr. Faye was not disciplined for giving orders to other employees without authority to do so. The claimant was discharged for leaving work early without permission, despite the fact that Mr. Faye had finished his job duties for him that night.

The claimant had no prior discipline for leaving work early. Another employee Efrain Sanchez also worked on the ends and pieces table that evening with the claimant. Mr. Sanchez was helping the claimant finish his job duties that evening. The employer contends that neither

Mr. Sanchez nor Mr. Faye should have been performing the claimant's job duties as they had not been trained to perform the job. The claimant did not ask either Mr. Sanchez or Mr. Faye to perform his job duties, they both offered to help and Mr. Faye sent the claimant home early. The supervisor, Ms. Conches, saw both Mr. Sanchez and Mr. Faye performing the claimant's job duties and neither one of them were disciplined for performing a job for which they had not been trained. The only person disciplined that evening was the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a

“wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer did not discipline either Mr. Sanchez or Mr. Faye who both admittedly broke the employer’s rules. Their conduct was known to the supervisor Ms. Conches. The employer did not apply the disciplinary policy equally to all employees. Granted, the claimant should not have gone home early without the permission of his supervisor. His job duties were performed that evening by Mr. Faye. The claimant’s conduct was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

**DECISION:**

The September 8, 2009, reference 02, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css